THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.14715, 16637, 26293, 26829, 12418, 15407, 15408, 15517, 15816, 17228, 17980, 26325, 26579, 26830, 26832 of 2005 & 7258 & 12420 of 2006

Dated 03-08-2006

W.P.No.26830 of 2005

Between
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND
M.Srinu.

….Respondent.

W.P.No.26832 of 2005

Between
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND

C.Rathnaiah & others.

….Respondents.

W.P.No.7258 of 2006

Between
C.Ghandraiah.

….. Petitioners

AND
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No.12420 of 2006

Between
B.Soma Raju & others.

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No.15816 of 2005

Between
M.Kiran Kumar & others.

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No.17228 of 2005

Between
D.Kishan.

….. Petitioners

AND
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No.17980 of 2005

Between
P.Satyanarayana.

….. Petitioners

AND
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.NO.26325 of 2005

Between
The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND
P.Satyanarayana & others.

….Respondent.

W.P.No.26579 of 2005

Between

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND

D.Kishan & others.

….Respondents.

W.P.No.26829 of 2005

Between

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND

S.Yadagiri & others.

….Respondents.

W.P.No.26293 of 2005

Between

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND

G.N.Raja Rao & others.

….Respondents.

W.P.No.16637 of 2005

Between

P.Nagaraju & others.

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No.12418 of 2006

Between

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….. Petitioners

AND

P.Naga Raju & others.

….Respondents.

W.P.No. 15407 of 2005

Between
D.R.Bhadru Nayak

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No. 15408 of 2005

Between
Parasuramulu

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

W.P.No. 15517 of 2005

Between
S.Shyam Kumar

….. Petitioners

AND

The Chairman, Central Board of Excise & Customs, North Block, New Delhi & others.

….Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.14715, 16637,26293, 26829, 12418, 15407, 15408, 15517, 15816, 17228, 17980, 26325, 26579, 26830, 26832 of 2005 & 7258 & 12420 of 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal, Hyderabad in O.A.No.1076 of 2004 and batch, dated 31-03-2005, both the Central Board of Customs and Excise and the casual labourers engaged under various Commissionerates are before this Court.

The causal workmen (the applicants in the O.A.), were engaged by the Commissionerates on different dates between 1993 to 2003. The applicants were aggrieved by the fact that they were being paid from the contingency funds and that most of them, engaged in cleaning, sweeping and gardening duties in the respondent-Organisation, were sought to be disengaged by introduction of a new procedure of out-sourcing and thereby engaging their services through contractors.

The Tribunal referred to the proceedings dated 26-11-2002 issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, whereunder it is stated that, in future, causal workers should not be recruited under any circumstances and that the cases of any negligence would be viewed seriously as gross violation of the standing instructions of the Department of Personnel and Training. Again, vide proceedings dated 10-04-2004, the Commissionerates were informed that it had come to the notice of the Board that large number of casual workers were engaged on daily wages, on contract or otherwise, in violation of the instructions issued on 26-11-2002, which had resulted in a number of cases being filed before the Tribunal/Courts claiming regularisation of their services. It is stated therein that engagement of persons on daily wages stood banned, that the Heads of Departments could not exercise their delegated powers in this regard, and that work for which no regular posts had been created/sanctioned may be outsourced through service providers/contractors after following the procedure in the GFRs and that payment, for such outsourcing through service provider, may be done from the provisions under

'Contingency Office Expenditure' and not from 'Wages'. It is also stated therein that insofar as casual workers on rolls, who had achieved temporary status, were concerned appropriate action be taken in terms of the guidelines in paragraph 3 of the Office Memorandum dated 06-06-2002.

It was not in dispute before the Tribunal, that except one applicant, all the others had been engaged only after 01-09-1993 and as such were not entitled even for grant of temporary status under the earlier scheme of regularisation. The Tribunal examined the rival contentions and, after taking note of the fact that an order was issued by the Government imposing ban on engagement of casual workers, and keeping in view the judgment of the Supreme Court in **Steel Authority of India Ltd. v. National Union Waterfront Workers & others**[1], which had overruled the earlier judgment in **Air India Statutory Corporation v. United Labour Union**[2], held that the applicants were not entitled to get the relief as prayed for. The Tribunal, however, held that since the entire case of the respondents in the O.A. showed that there was work and that they needed the help of the workers but for the ban and non-availability of funds, they had adopted a new method to get work done by casual labour through a contractor, and that being the position, the applicants engaged earlier by the respondents and who were continuing for a long period, should not be dislodged by freshers even through the contractors, and on lifting of the ban on the engagement of casual labourers and on availability of funds, the respondents shall consider the case of the applicants for the purpose of

regularization of their services, if necessary, by formulating a scheme for the said purpose.

Sri V.Srinivas and Sri B.G.Ravinder Reddy, learned counsel appearing on behalf of the causal labourers, would fairly concede that in view of the Constitution Bench judgment of the Apex Court in **Secretary, State of Karnataka v. UmaDevi**[3], the relief granted by the Tribunal, insofar as it had directed that the cases of the applicants be considered for regularisation of service, if necessary, by formulating a scheme, can no longer be sought for. Learned counsel would, however, submit that while there was adequate work available to engage the services of casual labourers, the respondents in the O.A., had devised a new scheme, to disentitle casual workmen forever from claiming regularisation of their services, in the mode of engaging their services through the medium of a contractor. Learned counsel would submit that the order of the Tribunal, in directing that the casual labourers be continued in service and that they shall not be dislodged by freshers even through contractors, does not call for interference. Learned counsel would, however, state that instead of directing that their services be continued through contractors, the Tribunal ought to have directed that their services be engaged directly as casual workmen so long as there was work in the Commissionerates, more so since neither the Commissioenrates nor the contractors have valid licenses under the Contract Labour (Regulation & Abolition) Act, for engagement of contract labour.

Sri I.Koti Reddy, learned Additional Central Government Standing Counsel, on the other hand, would submit that the mode

and the manner of engagement of the services of these casual labourers was for the Commissionerates, in their wisdom, to decide and not for Courts/Tribunals to impose and as long as there was no prohibition in law from getting the works done through contractors, it was not for the Tribunal to go into these aspects and direct that the services of these casual labourers be continued and that they should not be dislodged by freshers even through contractors. Learned counsel would submit that in view of the judgment of the Apex Court in **Steel Authority of India Ltd.**[1], the mere fact that the contractors did not have valid licenses would not make employees engaged by them the employees of the principal employer.

In view of the Constitution Bench judgment of the Apex Court in **UmaDevi**[3], it is not for Courts/Tribunals to issue a mandamus or direction for regularisation of the services of casual labourers. We may not be understood to have stated that the Government, even if it chooses to do so, should not frame a scheme for regularisaing the services of such casual labourers. All that we have held is that, Courts/Tribunals ought not to issue a mandamus or direction in this regard. If the employer, in his wisdom, chooses to frame a scheme of regularisation, it is always open for him to do so. The Central Administrative Tribunal erred in directing that the services of the causal labourers be continued and that they should not be dislodged even through contractors. No such direction could have been granted in view of the judgment of the Apex Court in **Steel Authority of India Ltd.**[1]. Whether the department had a valid licence under the Act, whether the engagement of contractors is a mere camouflage, whether the

provision of Contract Labour (Regulation and Abolition) Act, 1970 had been violated in engaging the services of the casual labourers through the contractors are all matters, which are required to be adjudicated on the basis of evidence and not for the Central Administrative Tribunal to have determined.

We consider it appropriate to set aside the order of the Central Administrative Tribunal leaving it open to the casual labourers concerned to avail such other remedies as are available to them in law, to agitate their grievances with regards engagement of their services through the contractors for works, in Commissionerates, which according to them are permanent and perennial in nature.

The Writ petitions are disposed of accordingly. No order as costs.

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B.PRAKASH RAO, J

Date:03-08-2006

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RAMESH RANGANATHAN, J

usd

[1] 2001(7) SCC 1

[2] AIR 1997 SC 645

[3] 2006(4)SCC 1